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DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 1010

RIN 1506-AB27

Imposition of Special Measure against FBME Bank Ltd., formerly known as the Federal Bank of the Middle East Ltd., as a Financial Institution of Primary Money Laundering Concern

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Final rule.

SUMMARY: In a Notice of Finding (NOF) published in the Federal Register on July 22, 2014, FinCEN found that reasonable grounds exist for concluding that FBME Bank Ltd. (FBME), formerly known as the Federal Bank of the Middle East Ltd., is a financial institution of primary money laundering concern pursuant to Section 311 of the USA PATRIOT Act (Section 311). On the same date, FinCEN also published in the Federal Register a Notice of Proposed Rulemaking (NPRM) to propose the imposition of a special measure authorized by Section 311 against FBME and opened a comment period that closed on September 22, 2014. On July 29, 2015, FinCEN published in the Federal Register a final rule imposing the fifth special measure, which the United States District Court for the District of Columbia subsequently enjoined before the rule's effective date of August 28, 2015. FinCEN is issuing this final rule imposing a prohibition on U.S. financial institutions from opening or maintaining a correspondent account for, or on behalf of, FBME in place of the rule published on July 29, 2015.

DATES: This final rule is effective [INSERT DATE 120 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: The FinCEN Resource Center at (800) 767-2825 or regcomments@fincen.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Provisions

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56 (the USA PATRIOT Act). Title III of the USA PATRIOT Act amends the anti-money laundering (AML) provisions of the Bank Secrecy Act (BSA), codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314, 5316–5332, to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism. Regulations implementing the BSA appear at 31 CFR Chapter X. The authority of the Secretary of the Treasury (the Secretary) to administer the BSA and its implementing regulations has been delegated to FinCEN.

Section 311 of the USA PATRIOT Act (Section 311) grants FinCEN the authority, upon finding that reasonable grounds exist for concluding that a foreign jurisdiction, foreign financial institution, class of transactions, or type of account is of "primary money laundering concern," to require domestic financial institutions and financial agencies to take certain "special measures" to address the primary money laundering concern. The special measures enumerated under Section 311 are

prophylactic safeguards that defend the U.S. financial system from money laundering and terrorist financing. FinCEN may impose one or more of these special measures in order to protect the U.S. financial system from these threats. Special measures one through four, codified at 31 U.S.C. 5318A(b)(1)–(b)(4), impose additional recordkeeping, information collection, and reporting requirements on covered U.S. financial institutions. The fifth special measure, codified at 31 U.S.C. 5318A(b)(5), allows FinCEN to prohibit or impose conditions on the opening or maintaining of correspondent or payable-through accounts for the identified institution by U.S. financial institutions.

B. FBME Bank Ltd.

FBME Bank Ltd. (FBME) was established in 1982 in Cyprus as the Federal Bank of the Middle East Ltd., a subsidiary of the private Lebanese bank, the Federal Bank of Lebanon. Both FBME and the Federal Bank of Lebanon are owned by Ayoub-Farid M. Saab and Fadi M. Saab. In 1986, FBME changed its country of incorporation to the Cayman Islands, and its banking presence in Cyprus was re-registered as a branch of the Cayman Islands entity. In 2003, FBME left the Cayman Islands and incorporated and established its headquarters in Tanzania. At the same time, FBME's Cypriot operations became a branch of FBME Tanzania Ltd. In 2005, FBME changed its name from the Federal Bank of the Middle East Ltd. to FBME Bank Ltd.

As of July 22, 2014, the date that FinCEN issued its Notice of Finding, FBME's headquarters in Tanzania was widely regarded as the largest bank in Tanzania based on its $2 billion asset size, despite having only four Tanzania-based branches. While FBME is presently headquartered in Tanzania, as of July 2014, FBME transacted over 90

percent of its global banking business and held over 90 percent of its assets in its Cyprus branch. FBME has long maintained a significant presence in Cyprus.

II. FinCEN's Section 311 Rulemaking Regarding FBME

A. The 2014 Notice of Finding and Notice of Proposed Rulemaking

In a Notice of Finding (NOF) published in the Federal Register on July 22, 2014, FinCEN explained its finding that reasonable grounds exist for concluding that FBME is a financial institution of primary money laundering concern pursuant to 31 U.S.C. 5318A.[1] FinCEN's NOF identified two main areas of concern: (1) FBME's facilitation of money laundering, terrorist financing, transnational organized crime, fraud schemes, sanctions evasion, weapons proliferation, corruption by politically-exposed persons, and other financial crime, and (2) FBME's weak AML controls, which allowed its customers to perform a significant volume of obscured transactions and activities through the U.S. financial system. In particular, FinCEN found that FBME had been used to facilitate this illicit activity internationally and through the U.S. financial system, and attracted high-risk shell companies (i.e., entities that typically have no physical presence other than a mailing address, and generate little to no independent economic value). As described in the NOF, FBME performed a significant volume of transactions and activities that had little or no transparency with regard to customer information and often no apparent legitimate business purpose. Such lack of transparency makes it difficult for U.S. and other financial institutions, as well as law enforcement, to detect illicit activity.

As detailed in the NOF, illicit activities involving FBME included: (1) an FBME customer's receipt of a deposit of hundreds of thousands of dollars from a financier for

[1] *See* 79 FR 42639 (July 22, 2014).

Lebanese Hezbollah; (2) providing financial services to a financial advisor for a major transnational organized crime figure; (3) FBME's facilitation of funds transfers to an FBME account involved in fraud against a U.S. person, with the FBME customer operating the alleged fraud scheme later being indicted in the United States District Court for the Northern District of Ohio; and (4) FBME's facilitation of U.S. sanctions evasion through its extensive customer base of shell companies, including at least one FBME customer that was a front company for a U.S.-sanctioned Syrian entity, the Scientific Studies and Research Center (SSRC), which used its FBME account to process transactions through the U.S. financial system.

On the same day it published the NOF, FinCEN also published in the Federal Register a related Notice of Proposed Rulemaking (NPRM) proposing the imposition of a prohibition on U.S. financial institutions from opening or maintaining a correspondent account for, or on behalf of, FBME.[2] On July 29, 2015, after considering comments and other information available to FinCEN, including both public and non-public information, FinCEN finalized the rule, to take effect on August 28, 2015.[3]

B. Re-opening of the Comment Period

Following the publication of the rule in the Federal Register, on August 7, 2015, FBME filed suit in the United States District Court for the District of Columbia, seeking a preliminary injunction against the final rule. On August 27, 2015, the court granted FBME's motion for preliminary injunction and enjoined the rule from taking effect.[4] In its order, the court held that FBME was likely to succeed on the merits of two of its

[2] 79 FR 42486 (July 22, 2014) (RIN 1506-AB27).
[3] 80 FR 45057 (July 29, 2015) (RIN 1506-AB27).
[4] FBME Bank Ltd. v. Lew, No. 1:15-cv-01270 (CRC), 2015 WL 5081209 (D.D.C. Aug. 27, 2015).

claims: (1) that FinCEN had provided insufficient notice of unclassified, non-protected information on which it relied during the rulemaking proceedings, and (2) that FinCEN had failed to adequately consider at least one potentially significant, viable, and obvious alternative to the special measure it had imposed.[5]

On November 6, 2015, the court granted FinCEN's motion for voluntary remand so that FinCEN could engage in further rulemaking to address the procedural issues identified by the court. On November 27, 2015, FinCEN published in the Federal Register a Notice to re-open the final rule for 60 days to solicit additional comments in connection with the rulemaking, particularly with respect to the unclassified, non-protected documents that supported the rulemaking, and whether any alternatives to the prohibition on the opening or maintaining of correspondent accounts for FBME would effectively mitigate the money laundering and terrorist financing risks associated with FBME. FinCEN also made available for comment on www.regulations.gov the unclassified, non-protected material that FinCEN considered and intended to rely upon during the rulemaking proceeding. The re-opened comment period closed on January 26, 2016.

III. FBME Developments

This section outlines steps taken by FBME's relevant banking regulators in FBME's jurisdictions of operation following FinCEN's announcement of its NOF and NPRM.

On July 21, 2014, the Central Bank of Cyprus (CBC), under authority of the Cyprus Resolution Act, issued a decree announcing that it would formally place FBME's

[5] *Id*. at *5.

Cyprus branch "under resolution" and appoint a Special Administrator to protect the bank's depositors. On December 21, 2015, the CBC announced that it is considering the withdrawal of FBME's license to operate the branch in Cyprus; however, there is litigation pending between FBME and the CBC.

On July 24, 2014, the Bank of Tanzania (BoT) appointed a statutory manager over FBME's headquarters in Tanzania to ensure sound operations of the bank in order to restore and maintain confidence of depositors and the general public; to ensure the safety of bank assets; and to execute duties in accordance with the prevailing laws and regulations, guidelines, and directives issued by the BoT.

IV. Summary of FinCEN's Ongoing Concerns Regarding FBME

After considering comments from FBME and the public as well as other information available to the agency, including both public and non-public information, FinCEN is issuing this rule imposing a prohibition on U.S. financial institutions from opening or maintaining a correspondent account for, or on behalf of, FBME. The information available to FinCEN[6] provides reason to conclude that FBME's AML compliance efforts remain inadequate to address the risks posed by FBME, and that FBME continues to facilitate illicit financial activity. Because of the ongoing money laundering and terrorist financing concerns that FinCEN has regarding FBME, FinCEN finds that FBME continues to be a financial institution of primary money laundering concern.

[6] As contemplated by Section 311, FinCEN's determinations that FBME is of primary money laundering concern and the appropriate special measure to address that concern are based on unclassified information provided to the public as well as classified or otherwise-protected materials. This final rule necessarily describes only the record information made available to the public or authorized to be publicly released.

As described in Part V, audits of FBME's Cyprus branch performed by third parties in 2013 and 2014 that FBME provided to FinCEN to demonstrate the effectiveness of its AML compliance program instead identified significant, recurring weaknesses in FBME's compliance program. Indeed, one of the third party auditors identified several deficiencies as being of high or medium significance. These deficiencies, which FinCEN has reason to conclude have continued since the issuance of the NOF, facilitate the illicit financial activities of FBME's customers.

Furthermore, FinCEN notes that these audits only address the bank's Cyprus branch. As defined in the NOF and NPRM, FinCEN's finding that FBME is of primary money laundering concern identified the entire bank, to include its headquarters in Tanzania and its other branches, offices, and subsidiaries.

Also, as discussed below, the CBC's identification of "serious and systemic" AML deficiencies at FBME following an AML examination of the bank's Cyprus branch in 2014, as well as the CBC's findings since the issuance of the NOF and NPRM, reinforce and corroborate FinCEN's concerns regarding the money laundering and terrorist financing risks associated with FBME.

FinCEN also concludes that FBME has sought to evade AML regulations and has ignored the CBC's AML directives. As noted in FinCEN's NOF, FBME was recognized by its high-risk customers for its ease of use. FBME even advertised the bank to its potential customer base as being willing to facilitate the evasion of AML regulations. FBME's Cyprus branch also ignored instructions from its AML regulator, the CBC, to remedy AML deficiencies specifically identified by the CBC. In addition, in late 2014, FBME employees took various measures to obscure information. FinCEN finds this

behavior may have been part of an effort to reduce scrutiny over FBME's operations following the issuance of the NOF and increased regulatory scrutiny. Moreover, FinCEN is concerned that terrorist financing activity involving the bank has continued beyond publication of the NOF. As of early 2015, an alleged Hezbollah associate and the Tanzanian company he managed owned accounts at FBME. And this is not the first episode of the bank's involvement in financial activity possibly connected to Hezbollah. As discussed in the NOF, in 2008, an FBME customer received a deposit of hundreds of thousands of dollars from a financier for Hezbollah.

The CBC's AML Examination of FBME's Cyprus Branch

As described in the NOF, FinCEN had reasonable grounds to find FBME to be of primary money laundering concern because, among other things, the bank's AML controls encouraged use of the bank by high-risk customers, and the bank conducted a significant volume of transactions and activities with little or no transparency and often with no apparent legitimate business purpose. The CBC independently identified many of these same concerns during an on-site AML examination of FBME's Cyprus branch conducted from June to September 2014.[7]

In a September 18, 2015 letter to the Special Administrator of FBME's Cyprus branch regarding that examination,[8] the CBC found, among other things, that FBME (1) failed to apply enhanced due diligence to high-risk customers; (2) allowed customers to

[7] That examination sought to evaluate FBME's Cyprus branch for compliance with the provisions of Part VIII of the Prevention and Suppression of Money Laundering Activities Law of 2007, the Directive issued by the CBC for the Prevention of Money Laundering and Terrorist Financing in December 2013, and the provisions of Regulation 1781/2006 of the European Parliament and of the Council of November 15, 2006 regarding information related to funds transfer information.

[8] FBME provided this letter to FinCEN as Exhibit 41 to its January 26, 2016 comment. FBME also included, as Exhibit 41a to its comment, a letter from the bank to the CBC, dated September 28, 2015, in which it raised issues regarding the conclusions set forth in the CBC's September 18, 2015 letter.

use FBME's physical address in wire transfers in lieu of the customers' true addresses, thus obscuring key transactional details that U.S. and other financial institutions need to conduct appropriate AML screening; (3) failed to adequately assess its own money laundering and terrorist financing risk, thus hindering the bank's ability to mitigate those risks; (4) accepted false beneficial ownership information for high-risk customers; and (5) maintained incomplete customer due diligence information and failed to update and review customer files.

In sum, according to the September 18, 2015 letter, the CBC identified "serious and systemic" AML failures—failures to comply with applicable AML laws that resulted in an "inadequate and ineffective" AML system. The CBC fined FBME €1.2 million in December 2015 for these AML deficiencies. These deficiencies contributed to the CBC's conclusion that the lack of robust AML controls at FBME's Cyprus branch increases the risk that the branch's services can be used by criminals for the purpose of money laundering and/or terrorist financing. FinCEN shares this concern.

Banks with weak AML controls, like FBME, can become a magnet for illicit actors seeking to hide their identity and the illicit nature of their activities. Indeed, the illicit activity at FBME, including holding an account for an alleged Hezbollah associate and the Tanzanian company he managed, illustrates this vulnerability. Protecting the United States from such illicit financial activity requires FinCEN to ensure that banks with severely deficient AML controls, like FBME, do not have access to the U.S. financial system.

As part of its January 26, 2016 comment, FBME included responses to the CBC's conclusions, which FinCEN reviewed as part of its evaluation of whether FBME remains

of primary money laundering concern. FBME's responses generally consisted of arguments that the CBC misinterpreted FBME's banking records or Cypriot regulations, that other Cypriot banks were as non-compliant with certain AML provisions as FBME, or expressed general disagreement with the CBC's conclusion. After a thorough point-by-point review of the deficiencies identified by the CBC and FBME's responses, FinCEN found FBME's responses to be neither persuasive nor sufficient to alleviate FinCEN's concerns surrounding FBME's AML deficiencies. For example, although FBME disputed the CBC's findings that the bank failed to maintain sufficiently comprehensive and up-to-date files on its customers, FinCEN notes that in some cases FBME conceded that the CBC's findings were correct. Further, FinCEN remains troubled by the fact that as of June 2014, FBME had completed its review of only three percent of its high-risk customer files. As another example, FBME accepted false identifying information regarding beneficial ownership of FBME customers who it should have known were high-risk. FBME contended that valid confidentiality concerns existed and that accepting the false information did not impede the application of enhanced due diligence measures. FinCEN, however, agrees with the CBC's assessment that excluding certain relevant information on customer forms prevented FBME from adequately identifying and mitigating money laundering risks.

V. Consideration of Comments

Following the issuance of the July 22, 2014, NOF and NPRM, FinCEN opened a comment period that closed on September 22, 2014. FinCEN re-opened the comment period on November 27, 2015, following the court's order granting the government's motion for a voluntary remand to allow for further rulemaking. That comment period

closed on January 26, 2016. FinCEN first addresses the comments received from FBME and then addresses the other comments received.

A. Comments received from FBME

1. FBME's September 22, 2014 Comment and Additional Submissions regarding the Notice of Finding and Proposed Rulemaking

FBME, through its counsel, submitted a comment dated September 22, 2014. FBME made six additional submissions of information related to that comment. FinCEN reviewed and considered each of these submissions in drafting this final rule.

FBME's September 22, 2014 comment consists of an introduction followed by two major sections. In its introduction, FBME makes six key points.

- First, FBME states that its AML compliance program policies are in line with applicable requirements, including the requirements of the European Union's Third Money Laundering Directive and the CBC's Fourth Directive. FBME contends that this alignment has been the case since at least 2013, according to third party audits.
- Second, FBME states that, in response to recommendations made as a result of audits conducted by Ernst & Young (EY) in 2011 and KPMG in 2013, FBME substantially strengthened its compliance program between 2012 and 2014.
- Third, FBME states that FBME and its officers and directors do not condone the use of FBME for illicit purposes and strive to prevent such misuse.
- Fourth, FBME contends that some of the statements made in the NOF are incorrect or are based on incomplete information, which FBME also describes in the second section of its comment.

- Fifth, FBME states that, in some cases, FBME filed Suspicious Transaction Reports (STRs) with the Cypriot Financial Intelligence Unit (MOKAS) on activity described in the NOF and NPRM.
- Sixth, FBME claims that the NOF and NPRM have had a significant adverse impact on FBME and its customers.

The first section of FBME's September 22, 2014 comment then describes aspects of its AML compliance program, and the second section responds to statements made in the NOF that FBME asserts are inaccurate or based on incomplete information.[9]

FBME's AML Program

With regard to FBME's first and second points, i.e., FBME's contention that its AML compliance program policies are in line with applicable requirements and that it has substantially strengthened its compliance program, the KPMG and EY audits that FBME provided to FinCEN show a pattern of recurring AML deficiencies at the bank. FBME has asserted that it continued to make improvements, but FBME has not provided meaningful information to support these assertions. These deficiencies included failures to maintain adequate customer identification files and other customer due diligence weaknesses, failure to ensure that third parties the bank relied on to establish new customer relationships employed appropriate AML controls with regard to such persons, and issues with sanctions-related screening.

[9] In this final rule, FinCEN focuses its response on the six points in the introduction, which summarize FBME's concerns with the NOF and NPRM. In responding to the first three points of FBME's introduction, FinCEN addresses the first section of FBME's comment because the first three points of FBME's introduction and the first section of FBME's comment all refer to FBME's AML compliance program, its policies, audits conducted by third parties, and FBME's management. In responding to the fourth point of FBME's introduction, FinCEN addresses the second section of FBME's comment because both the fourth point of the introduction and the second section of the comment refer to the same statements in the NOF that FBME asserts are inaccurate or based on incomplete information.

According to FBME's September 22, 2014 comment, EY conducted an audit in 2011 (the EY 2011 Audit). During that audit, according to FBME, EY found that FBME's due diligence procedures with respect to obtaining information from new clients met the requirements of the CBC Directive at the time, but also noted that some customer information requirements of the Directive had not been fully met by FBME in previous iterations of its AML procedures and policies. According to FBME's comment, EY conducted another audit in 2014 (the EY 2014 Audit), which found that, although FBME had an AML compliance program in place that incorporated the requirements of both the CBC Fourth Directive and the European Union Third Directive, FBME nevertheless had deficiencies in its customer due diligence, automated alerts system, and AML training areas.

According to FBME's September 22, 2014 comment, KPMG also conducted an audit in 2013 (the KPMG 2013 Audit) which found that FBME "basically fulfills" the AML regulatory requirements of the CBC and the European Union, but also identified issues of "high or medium" significance with FBME's use of Approved Third Parties and FBME's sanction screening procedures. As FBME stated in its September 22, 2014 comment, FBME uses its relationships with Approved Third Parties (a person authorized by a bank to introduce new customers to the bank), some of which are in foreign jurisdictions, to develop potential new customer relationships. According to the KPMG 2013 Audit, FBME had never attempted to ensure the adequacy of its Approved Third Parties' AML measures. In addition, the KPMG 2013 Audit found that FBME only screened the related parties of its Approved Third Parties when the customers were initially onboarded.

The KPMG 2013 Audit also found FBME's customer due diligence procedures to be deficient. As FBME disclosed in its September 22, 2014 comment, in its 2013 audit, KPMG recommended better presentation of ownership information to demonstrate links between group entities for older customers, in line with a new structure that had been introduced for new customers. KPMG also found that certain customer files reviewed did not have sufficient information to gain a complete understanding of the customers' activities or business rationale. In its 2013 audit, KPMG further found that FBME's use of hold-mail accounts (a service that allowed a number of customers to keep their mail within the branch and use the branch's address in payment messages for the transfer of funds) and post office boxes managed by Approved Third Parties should be reconsidered by FBME in order to avoid potential anonymization.

The EY 2014 Audit identified numerous deficiencies in FBME's compliance program. Specifically, the EY 2014 Audit made the following recommendations: consistently documenting the efforts taken to verify the sources of funds and business purpose of accounts from prospective customers; more thoroughly investigating relationships among FBME customers, especially when inordinate volumes of internal transfers are identified; modifying FBME's periodic customer due diligence process to align with industry practices (e.g., moving to a rolling 12 or 36-month review cycle, depending on the customer's risk); implementing an automated case management system to record the alerts generated, stage of investigation, and ultimate disposition of the alerts generated by FBME's screening software, as opposed to the current process of manually entering the alerts/outcome on several different spreadsheets; and more thoroughly

documenting the AML/sanctions training given for new hires and providing general awareness training to all employees on an annual basis.

The numerous AML compliance program deficiencies described in the KPMG 2013 Audit and the EY 2014 Audit in particular are similar to AML deficiencies FinCEN identified in the NOF. As FBME acknowledged in its September 22, 2014 comment, in 2010, the CBC fined FBME for customer identification, due diligence, and automated monitoring deficiencies. According to the KPMG 2013 Audit, FBME also undertook an extensive Know Your Customer (KYC) remediation project from 2009 through 2011 that was ordered by the CBC and resulted in the closure of thousands of FBME accounts. Despite this remediation project, the CBC identified deficiencies in the customer due diligence controls at the Cypriot branch during its 2014 AML audit. Also, the CBC fined FBME €1.2 million in December 2015 for AML deficiencies.

Finally, FBME's argument that its AML compliance program is now adequate is weakened by the list of illicit actors identified in the NOF that continued to make use of FBME as recently as 2014, including narcotics traffickers, terrorist financiers, and organized crime figures. In addition, as of early 2015, an alleged Hezbollah associate and the Tanzanian company he managed owned accounts at FBME.

FBME's Management

With regard to FBME's third point, i.e., FBME's contention that FBME and its officers and directors do not condone the use of FBME for illicit purposes, FinCEN has no reason to believe that FBME's leadership has changed after issuance of the NOF. Given that FinCEN has reason to believe that illicit activity occurred at FBME after the

NOF, FinCEN has no reason to believe that management has modified its practices and FBME has not provided information to support such a conclusion.

Alleged Errors in the Notice of Finding

With regard to FBME's fourth point, i.e., where FBME has argued that portions of the eight statements in the NOF were incorrect or based on incomplete information, FBME submitted on December 5, 2014 a report prepared by EY (2014 EY Transaction Review) that specifically examined the concerns that FinCEN identified in the NOF and NPRM. The 2014 EY Transaction Review in some cases partially identified the activity of concern, and as noted below, failed to identify the activity of concern, or identified additional illicit financial activity that FinCEN has not previously identified. After a careful consideration of the public and non-public information available to FinCEN, including the 2014 EY Transaction Review, FinCEN continues to believe that the concerns identified in the NOF remain valid and accurate.

FinCEN amended the NOF based on these comments in the final rule issued on July 29, 2015 that was subsequently enjoined by the court. In the first case, FBME stated that it was not fined by the CBC in 2008, but that the CBC imposed an administrative fine on FBME in 2010. FinCEN agrees that the fine in question was imposed in 2010, not in 2008.

In the second case, FBME argued that the report that FBME may have been subject to a fine of up to €240 million is from a November 2013 article in the Cypriot press that relied on anonymous sources at the CBC. FinCEN agrees that the source of this statement was an article that appeared in the Cypriot press that referenced statements by a CBC official speaking anonymously. Neither of these two cases, nor any of

FBME's remaining claims of incompleteness and factual inaccuracy, present any new information that would undercut the accuracy of the other information presented in the NOF.

FBME's Filing of STRs

With regard to FBME's fifth point, i.e., FBME's assertion that it filed STRs with MOKAS on activity described in the NOF and NPRM, FinCEN notes that the filing of STRs on suspicious activities or transactions by a financial institution is not, taken in isolation, an adequate indicator of the robustness and comprehensiveness of a compliance program. Moreover, filing STRs does not excuse a financial institution's failure to adequately implement other areas of its AML program, such as, for example, customer due diligence procedures.

Adverse Impact on FBME and its Customers

FBME claims in its sixth point that the NOF and NPRM have had a significant adverse impact on FBME and its customers. As part of FinCEN's consideration of the statutory factors supporting its imposition of a prohibition under the fifth special measure, FinCEN has considered "the extent to which the action or the timing of the action would have a significant adverse systemic impact on . . . legitimate business activities involving" FBME.[10] This factor is discussed in the NOF and Part VI, Section A(3) below.

In addition to its public comment, FBME submitted supplemental information regarding FBME's policies and procedures, along with reports of the audits conducted by KPMG in 2013 and EY in 2014. Many of these submissions are addressed elsewhere in

[10] 31 U.S.C. 5318A(a)(4)(B)(iii).

this final rule. FinCEN has considered these materials, which outline some of the steps that FBME may have taken to strengthen its compliance program. Although FBME claims that it took steps to address some of the obvious deficiencies in its AML controls, it failed to correct other deficiencies and it continues to pose a significant risk. After reviewing and considering these and other public and non-public materials, FinCEN concludes that, except as acknowledged in this final rule, the statements made in the NOF remain accurate.

2. FBME's January 26, 2016 Comment on the Re-opened Rulemaking

FBME submitted a comment on January 26, 2016, during the re-opened comment period. Set forth below are the key points raised in this comment and FinCEN's responses.[11]

First, FBME argues that the procedures FinCEN followed in connection with the proposed rule are unconstitutional and unlawful. Specifically, FBME asserts that (1) FinCEN failed to provide FBME with meaningful notice and opportunity to confront evidence against it; (2) FBME is entitled to a neutral arbiter; and (3) FBME has a right to a hearing.

The procedures used by FinCEN are constitutional and lawful. FinCEN provided FBME with meaningful notice and opportunity to confront the evidence against it. Although FBME argues that FinCEN should not be able to rely on "secret" evidence, as previously noted, FinCEN disclosed all of the unclassified, non-protected information that it relied upon or otherwise considered during the rulemaking. FinCEN did not disclose information that is classified or otherwise protected from disclosure, and the law

[11] FBME also submitted an additional exhibit to its January 26, 2016 comment on January 29, 2016. FinCEN reviewed and considered this exhibit in drafting this final rule.

does not require that it do so. As for the due process argument, the process that FinCEN has undertaken is consistent with the Constitution and the Administrative Procedure Act (APA). Section 311 expressly provides for the reliance on classified information in making findings of primary money laundering concern and provides that such information will be submitted to the court ex parte and in camera. The BSA expressly protects from disclosure information to include Suspicious Activity Reports (SARs) to protect reporting financial institutions and their employees, and to encourage honest and open reporting of suspicious activity. FinCEN's use of SARs is more fully discussed later in this rule.

FinCEN engaged in a fully interactive process with FBME. It accepted and considered multiple submissions of information from FBME that sought to rebut or otherwise address the agency's findings, and participated in an active, long-running dialogue with the bank's counsel regarding the finding and the NPRM. Ultimately, after reviewing the bank's submissions, as well as additional information obtained from various non-public sources, FinCEN exercised its discretion in determining that reasonable grounds existed to find FBME of primary money laundering concern.

In making the finding that FBME was of primary money laundering concern, FinCEN exercised the specific grant of authority given to FinCEN by Congress and the Secretary.[12] FinCEN interpreted the relevant law and statutory provisions applicable to this exercise of authority. FinCEN exercised this authority consistent with the statute. Section 311 does not provide a right to a hearing, nor do applicable authorities allow for a neutral arbiter in making findings of primary money laundering concern. Section 311, as

[12] 31 U.S.C. 5318A.

delegated by the Secretary, gives the authority to make such findings to FinCEN upon consultation with the Departments of State and Justice. The APA does not require otherwise for Section 311 rulemaking.

Second, FBME argues that FinCEN should not rely on information provided to it by the CBC, as the Cypriot government has consistently discriminated against FBME because it is owned by non-Cypriots and is financially stable. In support of this argument, FBME provides several examples of the CBC's alleged discrimination, including its denial of FBME's attempts to incorporate in Cyprus and other business opportunities, as well as the imposition of what FBME describes as unreasonable regulatory requirements and fines. FBME also argues that coordination between FinCEN and the CBC raises serious concerns, claiming that FinCEN and the CBC acted in concert against FBME.

As part of this rulemaking, FinCEN has reviewed a significant amount of information, including information related to fines that the CBC imposed on FBME and CBC examinations of FBME's Cyprus branch. As with any information available to the agency, FinCEN makes an independent assessment of its credibility and relevance. FinCEN assesses that the CBC is a government authority with relevant information related to the finding that FBME is of primary money laundering concern. The CBC has received positive reviews that cite the CBC's adequate monitoring of the Cypriot financial system for money laundering and terrorist financing issues from the Committee of Experts on the Evaluation of Anti-Money Laundering and the Financing of Terrorism (MONEYVAL), an inter-governmental organization established to set standards and

promote effective implementation of measures for combating money laundering and terrorist financing.[13]

FinCEN's consideration of information and actions related to the CBC's supervisory role over FBME is not improper and does not reflect inappropriate coordination with the CBC. Contrary to FBME's assertion, FinCEN has exercised its authority independently under Section 311 to protect the U.S. financial system.

Third, FBME argues that this administrative action is flawed for the following key reasons:

- FBME asserts that it has rebutted each of the allegations identified in FinCEN's NOF and that FinCEN did not provide any additional information supporting its finding that FBME is of primary money laundering concern since the publication of the NOF. With respect to FBME's assertion that it rebutted each of the allegations in the NOF, FinCEN disagrees and notes that it considered and addressed FBME's September 22, 2014 comment, and its supplemental submissions, and FBME's January 26, 2016 comment, which contained FBME's rebuttals to the allegations identified in FinCEN's NOF, as set forth in Part V, Section A. Pursuant to the court's order granting FinCEN's request for a voluntary remand, the agency made publicly available all unclassified, non-protected information the agency relied upon as part of this rulemaking, including news articles regarding Italian government corruption and money laundering involving FBME, and information concerning alleged Hezbollah affiliated accounts at FBME.

[13] Committee of Experts on the Evaluation of Anti-Money Laundering and the Financing of Terrorism (MONEYVAL). "Report of the Fourth Assessment Visit – Executive Summary: Anti-Money Laundering and the Combating of the Financing of Terrorism: CYPRUS." 27 Sep 2011. (last visited March 21, 2016). <https://www.coe.int/t/dghl/monitoring/moneyval/Countries/Cyprus_en.asp>.

- FBME contends that FinCEN ignored its assertion that FBME has an extensive AML compliance program that meets or exceeds local and European requirements. FBME also asserts that it has continued to make improvements to its AML program, as recently as January 2016. Even if FBME adopted specific policies and procedures to comply with AML requirements, FinCEN is concerned that FBME would not implement those policies and procedures given FBME's history of ignoring instructions from the CBC to improve the bank's AML controls at it Cyprus bank and its past willingness to evade AML regulations. For example, in late 2014, FBME employees took various measures to obscure information. Separately, the CBC noted in assessing a €1.2 million fine in December 2015 that FBME failed to comply with Cypriot money laundering laws and directives and European Union regulations related to funds transfers.
- FBME argues that FinCEN continues to ignore the positive conclusions reached by independent auditors and investigators concerning FBME's evolving AML practices. The EY 2014 Audit and other third party audits show a pattern of recurring AML deficiencies at FBME. This issue is addressed more fully above in Part V, Section A(1) above. As discussed, the deficiencies in FBME's AML compliance program described in the KPMG 2013 Audit and the EY 2014 Audit are similar to the AML deficiencies that FinCEN identified in the NOF, and support FinCEN's conclusion that there have been longstanding and comprehensive deficiencies in FBME's AML compliance program.
- FBME asserts that FinCEN failed to consider that FBME has promptly and consistently adopted auditors' suggestions to establish an AML compliance program

that exceeds applicable legal requirements. As more fully addressed in Part V, Section A(1) above, FBME's assertion is contradicted by the findings of its third party auditors and by the CBC. FBME states that Exhibit 28 to its January 26, 2016 comment demonstrates its commitment to effective AML policies by documenting FBME's responses to, and implementation of, KPMG's recommendations in its 2013 audit to improve FBME's AML program, as of January 26, 2016. FBME also notes that Exhibit 33 to its January 26, 2016 comment details how FBME purportedly implemented the recommendations identified in the EY 2014 Audit. However, FBME does not provide any meaningful information that allows FinCEN to fully evaluate whether FBME has implemented those recommendations in the manner that FBME asserts it has. For example, according to FBME, it has purchased and implemented an onboarding platform to maintain key information regarding ultimate beneficial owners and address information for FBME customers. However, FBME did not provide meaningful information or documentation to demonstrate whether that onboarding platform satisfies EY's recommendation.

- FBME states that the allegations in FinCEN's NOF are misleading and inaccurate.
    - FBME argues that the 2014 EY Transaction Review refutes the allegations in the NOF.[14] However, FinCEN disagrees as discussed above in Part V, Section A(1).
    - FBME argues that supplemental information that FinCEN provided as part of the re-opened comment period only further undermines FinCEN's conclusions

[14] The 2014 EY Transaction Review was an evaluation of 11 statements from the NOF deemed specific enough for EY to attempt to identify and validate the relevant FBME customers, their activities, and related transactions.

in the NOF. When FinCEN re-opened the comment period in November 2015, it provided supplemental information indicating that FBME had been used as part of a scheme involving Italian government corruption and money laundering. The money transferred to FBME in Tanzania was frozen and then sent back to Italy when the Tanzanian Financial Intelligence Unit and the BoT, which monitors foreign currency transactions, became suspicious of the activity at FBME. FBME argues that it detected the suspicious transaction, suspended the activity, returned the funds, closed the customer's accounts and all accounts related to it, and notified the Tanzanian authorities pursuant to FBME's AML policies and procedures. FinCEN notes that FBME did not provide documentation to substantiate its assertion. Regardless, the identification of a single transaction does not address FinCEN's broader concerns about FBME's systemic AML deficiencies.

- FinCEN's NOF and NPRM found, as reflected in the administrative record, that FBME facilitated sanctions evasion on behalf of a sanctioned Syrian entity. FBME argues that FinCEN's reliance on the fact that a sanctioned individual was a customer of FBME as part of its finding that FBME was of primary money laundering concern was unjust, in part, because the customer's account had been closed or inactive since at least 2008, which FBME notes was years before the customer was sanctioned. In the 2014 EY Transaction Review, FBME identified an individual who was sanctioned by the Treasury Department's Office of Foreign Assets Control (OFAC) in 2014 for providing material support and services to the Government of Syria as an FBME

customer. However, the sanctioned entity referenced in FinCEN's NOF was not the individual identified by FBME. Instead, FBME identified an additional sanctioned entity related to Syria that was also a customer of FBME.

- FBME argues that FinCEN's use of SARs is misconceived and these reports should be made available to FBME to satisfy due process requirements. FBME argues that FinCEN does not correctly analyze SARs, that its reliance on SARs is arbitrary and capricious, that FinCEN should not rely upon SARs filed by other financial institutions, and that FinCEN's refusal to provide SARs to FBME violates due process.

FinCEN disagrees and notes that SARs, which are filed by financial institutions regarding transactions revealing a possible violation of law, are an invaluable source of information and an important tool for financial investigations. In this case, FinCEN believes that the SARs related to FBME are relevant to the finding that FBME is of primary money laundering concern when viewed in the context of all the other information considered. Multiple SARs indicate that FBME facilitated transactions on behalf of shell companies which, as stated earlier, can be an indicator of money laundering and other suspicious activity.

Regarding disclosure of SARs to FBME, the improper disclosure of SARs may cause significant risk to the filing institution and its employees. To encourage honest and open reporting of suspicious activity and to protect reporting financial institutions and their employees, the BSA and its

implementing regulations impose severe restrictions on improper disclosures of SARs, and violations of these restrictions may result in civil or criminal sanctions.[15]

- FBME argues that the mere fact that FBME transacted with shell or holding companies is not a basis to conclude that FBME is of primary money laundering concern. FinCEN's finding that FBME is of primary money laundering concern is not based solely on the fact that FBME transacts with shell companies, but rather is based on all of the information FinCEN considered when issuing the NOF. The formation and operation of shell companies can allow the owners of these companies to disguise their identity and purpose. With respect to FBME, FinCEN considered all of the relevant information and is particularly concerned with: (1) the large number of FBME customers that are either shell companies or that conduct transactions with shell companies; (2) the lack of transparency with respect to beneficial ownership or legitimate business purposes of many of FBME's shell company customers; (3) the location of many of its shell company customers in other high-risk money laundering jurisdictions outside of Cyprus; (4) the high volume of U.S. dollar transactions conducted by these shell companies with no apparent business purpose; and (5) FBME's longtime facilitation of its shell company customers' anonymity by allowing thousands of customers to use the bank's physical address in lieu of their own.
- FBME argues that FinCEN failed to explain why it finds FBME to be of primary money laundering concern. The NOF and this rule provide an explanation as to the

[15] *See* 31 U.S.C. 5318(g)(2) (prohibiting disclosure of SAR information to anyone involved in the reported transaction); 31 CFR 1020.320(e) (implementing regulation for depository institution SARs); 31 U.S.C. 5321, 5322 criminal and civil sanctions for BSA violations, including improper SAR disclosures); and 31 CFR 1010.820, 1010.840 (implementing regulations for civil and criminal penalties for BSA violations).

basis for FinCEN's conclusion that there are reasonable grounds to find that FBME is of primary money laundering concern and to impose a special measure to address that concern.

Fourth, FBME argues that there are several alternatives to a prohibition of correspondent accounts under the fifth special measure. This issue is addressed below in Part VI.

FinCEN notes that FBME's January 26, 2016 comment includes 67 separate exhibits consisting of over 1,100 pages of documents, many of which are declarations, emails, letters, comments or information previously considered and evaluated in this record. FinCEN reviewed the exhibits as part of its consideration of FBME's comments and, if appropriate, addressed the exhibits elsewhere in this document.

B. Other Comments Received from the Public during Both Comment Periods

FinCEN received three comments in addition to the comment received from FBME during the initial comment period that opened on July 22, 2014 and closed on September 22, 2014.

FinCEN considered a comment received from the American Bankers' Association (ABA), dated September 22, 2014; a joint comment received from the Securities Industry and Financial Markets Association (SIFMA) and The Clearing House (TCH), dated September 22, 2014; and a separate comment received from SIFMA, dated September 22, 2014. FinCEN notes that these comments are procedural in nature and do not address the underlying conclusion surrounding the risk of money laundering and terrorist financing through FBME. FinCEN addresses the comments from the ABA, SIFMA, and TCH in the section-by-section analysis in Part VII below.

During the re-opened comment period that opened on November 27, 2015 and closed on January 26, 2016, in addition to FBME's comment, FinCEN received twelve comments[16] that generally raise the following issues: (1) FinCEN's purported use of unreliable, misleading, or inaccurate information to support its NOF and NPRM, (2) APA or Constitutional due process requirements, (3) concerns about the CBC's impartiality with respect to FBME, and (4) concerns that FinCEN is unfairly focusing on FBME as opposed to U.S. persons or other financial institutions. These comments are addressed below.

1. FinCEN's Purported Use of Unreliable, Misleading, or Inaccurate Information to Support its NOF and NPRM

Multiple comments raise concerns regarding FinCEN's purported use of unreliable, misleading, or inaccurate information to support its NOF and NPRM. Multiple comments state that FinCEN's reliance on articles available on the Internet is concerning because they consider the articles unreliable sources of information.

FinCEN relies on a variety of information sources to support its rulemaking, including government-published material and press articles that may be found on the Internet. FinCEN assesses the credibility and weight to be given to Internet sources on a case-by-case basis, as it does with respect to all of its sources of information. FinCEN has continued to vet articles in the administrative record and when inaccuracies are identified, they are corrected. As discussed previously in Part V Section A(1), FinCEN

[16] Thirteen comments were submitted during the re-opened comment period that opened on November 27, 2015 and closed on January 26, 2016. In advance of publicly posting one of those comments received on January 18, 2016, the agency provided it to legal counsel for FBME to request redactions as appropriate. Legal counsel for FBME claimed that the comment contained privileged and confidential information and objected to the agency's consideration of that comment and to any public posting. While the agency does not concede that the comment is privileged, it has not publicly posted the comment and has not considered the comment as part of this rulemaking.

corrected two inaccuracies, which FinCEN is publishing in this rule. FinCEN reviewed the remaining articles identified in these comments and finds that they provide valuable context and information about the background and history of FBME and its role in the Cypriot financial system.

2. APA and Constitutional Due Process Requirements

Multiple commenters state that FinCEN's actions violates the APA and are unconstitutional for reasons similar to those FBME asserted in its comments. FinCEN has reviewed the comments and believes the processes followed in this action were lawful and an appropriate exercise of FinCEN's authority. FinCEN notes that this issue is addressed above in Part V Section A(2) above.

3. Concerns about the CBC's Impartiality with Respect to FBME

Several commenters raise concerns with the CBC. Specifically, the commenters state that the CBC has provided FinCEN with misleading information, that CBC is incompetent, inefficient, and corrupt, and that FBME is in litigation with the CBC at the International Chamber of Commerce in Paris.

As part of this rulemaking, FinCEN has reviewed a significant amount of information, including information related to fines that the CBC imposed on FBME and CBC examinations of FBME's Cyprus branch. As with any information available to the agency, FinCEN makes an independent assessment of its credibility and relevance. FinCEN assesses that the CBC is a government authority with relevant information related to the finding that FBME is of primary money laundering concern. The CBC has received positive reviews that cite the CBC's adequate monitoring of the Cypriot

financial system for money laundering and terrorist financing issues from MONEYVAL, an inter-governmental organization established to set standards and promote effective implementation of measures for combating money laundering and terrorist financing.[17]

As part of this rulemaking, FinCEN reviewed a significant amount of information, to include information related to fines and audits conducted by the CBC. FinCEN's consideration of information and actions related to the CBC's supervisory role over FBME is not improper, but rather reflects FinCEN's consideration of the totality of information relevant to FBME as part of the agency's own rulemaking. FinCEN notes that this issue is also addressed above in Part V Section A(2).

4. Concerns that FinCEN is Unfairly Focusing on FBME as Opposed to U.S. Persons or Other Financial Institutions

Three comments asserted that FinCEN treated FBME differently than other foreign financial institutions or U.S. persons and financial institutions. Specifically, the commenters identify other foreign banks involved in money laundering that were not the subject of a Section 311 rulemaking. In addition, a commenter notes that the involvement of U.S. persons and financial institutions in criminal activity was identified and questions what FinCEN has done about the criminal activity in the United States.

FinCEN may find only financial institutions operating outside of the United States to be of primary money laundering concern under Section 311. FinCEN continues to monitor for other instances of money laundering by foreign financial institutions and executes its authorities as appropriate.

[17] *See* Committee of Experts on the Evaluation of Anti-Money Laundering and the Financing of Terrorism (MONEYVAL) supra note 13.

VI. Imposition of Special Measure against FBME as a Financial Institution of Primary Money Laundering Concern

As described in the NOF, NPRM, and as described in this document, FinCEN continues to find that reasonable grounds exist for concluding that FBME is a financial institution of primary money laundering concern. Based upon that finding, FinCEN is authorized to impose one or more special measures. Following the required consultations and the consideration of all relevant factors discussed in the NOF, FinCEN proposed the imposition of a prohibition under the fifth special measure in an NPRM published on July 22, 2014. The fifth special measure authorizes a prohibition against the opening or maintaining of correspondent accounts by any domestic financial institution or agency for, or on behalf of, a financial institution found to be of primary money laundering concern.

After re-opening the comment period, FinCEN considered all of the special measures, as well as measures short of a prohibition, and concluded that a prohibition under the fifth special measure is still the appropriate choice. Consistent with the finding that FBME is a financial institution of primary money laundering concern and in consideration of additional relevant factors, this final rule imposes a prohibition on the opening or maintaining of correspondent accounts by covered financial institutions for, or on behalf of, FBME under the fifth special measure. The prohibition on the opening or maintenance of correspondent accounts imposed by the fifth special measure will help guard against the money laundering and terrorist financing risks that FBME presents to the U.S. financial system as identified in the NOF, NPRM, and this final rule.

A. Discussion of Section 311 Factors

1. Whether Similar Actions Have Been or Will Be Taken by Other Nations or Multilateral Groups against FBME

Given the interconnectedness of the global financial system, the potential for FBME to access the U.S. financial system indirectly, including through the use of nested correspondent accounts, exposes the U.S. financial system to FBME's risks. Accordingly, FinCEN concludes that it is necessary to restrict both direct and indirect access to the U.S. financial system by FBME, particularly since FinCEN does not have information suggesting that any other country has prohibited FBME from accessing its financial system in the same manner as this rule, based on the information available to FinCEN.

Moreover, despite measures that the CBC and the BoT have taken to protect the bank's depositors, FinCEN has reason to believe that those measures do not fully address the money laundering and terrorist financing risks associated with FBME. The continuation of illicit activity at the bank's Tanzanian headquarters even after the BoT appointed a statutory manager on July 24, 2014, bolsters FinCEN's concern. Specifically, in early 2015, an alleged Hezbollah associate and the Tanzanian company he managed owned accounts at FBME.

2. Whether the Imposition of the Fifth Special Measure Would Create a Significant Competitive Disadvantage, Including Any Undue Cost or Burden Associated With Compliance, for Financial Institutions Organized or Licensed in the United States

The fifth special measure imposed by this rulemaking prohibits covered financial institutions from opening or maintaining a correspondent account for, or on behalf of, FBME. As a corollary to this measure, covered financial institutions are also required to take reasonable steps to apply special due diligence, as set forth below, to all of their correspondent accounts to help ensure that no such account is being used indirectly to

provide services to FBME. FinCEN does not expect the burden associated with these requirements to be significant. There is only a minimal burden involved in transmitting a onetime notice to correspondent account holders concerning the prohibition on indirectly providing services to FBME. U.S. financial institutions generally apply some level of transaction and account screening, often through the use of commercially available software. Financial institutions should, if necessary, be able to easily adapt their current screening procedures to support compliance with this final rule. Thus, the prohibition on the opening or maintenance of correspondent accounts required by this rulemaking is not expected to impose a significant additional burden upon U.S. financial institutions.

3. The Extent to Which the Action or Timing of the Action Will Have a Significant Adverse Systemic Impact on the International Payment, Clearance, and Settlement System, or on Legitimate Business Activities Involving FBME

FBME is not a major participant in the international payment system and is not relied upon by the international banking community for clearance or settlement services. Thus, the imposition of a prohibition under the fifth special measure against FBME will not have a significant adverse systemic impact on the international payment, clearance, and settlement system.

While this action could affect FBME's legitimate business activities in the jurisdictions in which it operates, FinCEN believes that the need to protect U.S. financial institutions from the money laundering and terrorist financing risks presented by FBME outweighs any of those potential effects. Also, FinCEN believes that a not insignificant amount of FBME's business activities are illegitimate. For example, as explained in the NOF, wire transfers related to suspected shell company activity accounted for hundreds of millions of dollars of FBME's financial activity between 2006 and 2014. In just the

year from April 2013 through April 2014, FBME conducted at least $387 million in wire transfers through the U.S. financial system that had indicators of high-risk money laundering typologies, including shell company activity. FinCEN recognizes that shell companies are sometimes used for legitimate business activity, but notes that they are also commonly used on behalf of high-risk customers as vehicles to obscure transactions and launder money.

4. The Effect of the Action on United States National Security and Foreign Policy

Imposing a prohibition under the fifth special measure complements the U.S. Government's foreign policy efforts to expose and disrupt international money laundering and to encourage other nations to do the same. The United States has been a leader in combating money laundering and terrorist financing not only through action with regard to specific institutions, but also through participation in international operational and standard-setting bodies such as the Egmont Group and the Financial Action Task Force.

Excluding FBME and other banks that serve as conduits for money laundering, terrorist financing, and other financial crimes from the U.S. financial system will enhance U.S. national security by making it more difficult for terrorists, sanctions evaders, and money launderers to access the substantial resources of the U.S. financial system. As discussed in the NOF, NPRM, as well as herein, FBME facilitates money laundering, terrorist financing, transnational organized crime, fraud schemes, sanctions evasion, weapons proliferation, corruption by politically exposed persons, and other financial crimes. FinCEN is concerned that this activity, which has occurred at FBME for many years, persists. As of early 2015, an alleged Hezbollah associate and the Tanzanian

company he managed owned accounts at FBME. This is not the first episode of the bank's involvement in financial activity possibly connected to Hezbollah, an organization designated by the U.S. government as a Foreign Terrorist Organization. As discussed in the NOF, in 2008, an FBME customer received a deposit of hundreds of thousands of dollars from a financier for Hezbollah.

B. Consideration of Alternatives to a Prohibition under the Fifth Special Measure

FinCEN concludes that a prohibition under the fifth special measure is the only viable measure to protect the U.S. financial system against the money laundering and terrorist financing threats posed by FBME. In making this determination, FinCEN considered alternatives to a prohibition under the fifth special measure, including the first four special measures, imposing conditions on the opening or maintaining of correspondent accounts for, or on behalf of, FBME, and the alternatives suggested by FBME. For the reasons explained below, FinCEN concludes that none of these alternatives would sufficiently safeguard the U.S. financial system from the risks posed by FBME.

1. Special Measures One through Four and Conditions under the Fifth Special Measure

The first four special measures are focused on gathering additional information, and include (1) requiring additional recordkeeping and reporting of certain transactions, (2) requiring information related to beneficial ownership information, (3) requiring information related to certain payable-through accounts, and (4) requiring correspondent account customer information.[18] Also, under the fifth special measure, FinCEN can

[18] 31 U.S.C. § 5318A(b)(1)-(4)

impose conditions—rather than a prohibition—on the opening or maintaining of correspondent accounts for FBME.[19]

There could be any number of conditions imposed under the fifth special measure, including those suggested by FBME in its January 26, 2016 comment. The parties responsible for assuring compliance with these conditions could include FinCEN and/or U.S. financial institutions. However, any condition, and any of the first four special measures, inherently rely on FBME to provide accurate, credible, and reliable information to the party responsible for assuring compliance. Given FBME's extensive history of AML deficiencies, including ignoring its own AML regulator's directives, and its active efforts to evade AML regulations, including advertising the bank to potential customers as being willing to facilitate the evasion of AML regulations, FinCEN has a reasonable basis to doubt the accuracy, credibility, or reliability of any information that FBME would provide in connection with compliance with any condition on the maintenance of correspondent accounts or the other four special measures available under Section 311.

Specifically, the CBC concluded that FBME's Cyprus branch failed to remedy AML weaknesses identified in previous CBC exams, despite the CBC's instructions to do so. FinCEN is also particularly concerned that FBME continued to take measures to evade regulatory oversight even after FinCEN highlighted its concerns in the NOF. In late 2014, FBME employees took various measures to obscure information. FinCEN finds this behavior may have been part of an effort to reduce scrutiny by its regulators over FBME's operations. In light of all of these factors, FinCEN is not assured that

[19] 31 U.S.C. § 5318A(b)(5)

FBME will implement appropriate and necessary safeguards to ensure that it provides accurate, credible, and reliable information to the entities tasked with ensuring compliance with any alternative special measure or any condition under the fifth special measure.

Moreover, the "serious and systemic" AML deficiencies identified by the CBC during its 2014 AML examination of the bank's Cyprus branch inform FinCEN's concern that FBME would provide incomplete or erroneous information to FinCEN and/or U.S. financial institutions. As described above, the CBC found, in part, that FBME failed to apply enhanced due diligence to high-risk customers, allowed customers to obfuscate key identifying information and transactional details, and failed to maintain complete customer due diligence information. Accordingly, FinCEN assesses that any customer or transactional information provided by FBME would likely reflect these deficiencies.

2. Alternative Remedies Suggested by FBME

In its January 26, 2016 comment, FBME suggested multiple alternatives that it argued would be less damaging and still ensure that FBME poses no danger to the U.S. financial system. As noted above, FBME asserts that these alternatives could be conditions to FBME's eligibility to maintain correspondent accounts. To the extent that the alternatives depend on additional reporting or recordkeeping, FinCEN maintains that they would not protect the U.S. financial system from the risks posed by FBME because they would depend on FBME to provide accurate, credible, and reliable information, which FinCEN does not believe FBME will provide. As described above and as reflected in the record, FBME previously disregarded the instructions of its AML regulator; engaged in opaque and suspicious money transfers; maintains deficient AML controls;

and its employees took various measures to obscure information. Given this past behavior, FinCEN cannot reasonably rely on a proposed resolution that depends on FBME's candid provision of complete, credible, and accurate information.

FBME has also suggested as alternatives to a prohibition under the fifth special measure the imposition of an independent monitor to oversee and report on FBME's operations, making periodic reports to FinCEN regarding FBME's operations, placing appropriate conditions on the use of correspondent accounts, and consulting with FinCEN, or an expert chosen by FinCEN, to adopt specific and detailed policies to supplement FBME's existing compliance program. Like the first four special measures, the effectiveness of these alternatives to safeguard the U.S. financial system from the risks posed by FBME inherently depends on FBME to provide accurate, reliable, and credible information. In order for a monitor to work effectively, that monitor would have to have access to reliable, credible, and accurate customer and transactional information. But as noted above, FinCEN has a reasonable basis to doubt the accuracy, credibility or reliability of any such information provided by FBME, given FBME's history of ignoring its own AML regulator's directives and its active efforts to evade AML regulations. And with respect to FBME's suggestion to consult with FinCEN, or an expert chosen by FinCEN, to adopt specific policies and procedures, FinCEN remains concerned that FBME would not effectively implement any such policies given FBME's history of ignoring recommendations from its regulator to improve its AML controls.

FBME suggests two other alternatives that would not mitigate FinCEN's concerns regarding the bank's AML program for different reasons. FBME suggests that FinCEN should consider requiring FBME to pay a monetary fine for any historical shortcoming in

FBME's AML compliance. By way of example, FBME cites to the civil money penalties that FinCEN imposed on a domestic bank and a domestic casino for violating certain U.S. AML laws. But the payment of a fine does not achieve the very purpose of the special measures available under Section 311, namely, to protect the U.S. financial system against risks posed by foreign financial institutions found to be of primary money laundering concern. Payment of a fine would not ameliorate the concerns that FinCEN has regarding FBME's deficient AML controls, which present risks to the U.S. financial system.

FBME also suggests that FinCEN require FBME to refrain from transactions that FinCEN deems most "worrisome." Given the lack of transparency surrounding many of FBME's transactions, FinCEN is not confident that it would be able to identify all of the potentially "worrisome" transactions in which FBME might engage. And even assuming the ability to enforce such a provision, and the ability to identify these transactions, refraining from these transactions alone would not address all of the broader concerns regarding the bank's deficient AML controls.

Finally, just as none of FBME's suggested alternatives would sufficiently address FinCEN's concerns, no combination of these alternatives would do so either. Because such alternatives ultimately depend on FBME to provide accurate, reliable, and credible information, FinCEN concludes that no combination of these alternatives could overcome that fundamental deficiency.

In its January 26, 2016 comment, FBME also compares this matter to FinCEN's Section 311 action regarding Multibanka, a Latvia-based bank. In that matter, FinCEN withdrew a finding and an NPRM proposing the fifth special measure prohibiting the

opening or maintaining of correspondent accounts for, or on behalf of, Multibanka after the bank took certain remedial measures to address FinCEN's concerns.[20] FBME argues that FinCEN should similarly withdraw the NPRM here.

FinCEN determines the appropriate outcome of a Section 311 action on a case-by-case basis. The matter of Multibanka is not analogous to the one here. At the time FinCEN withdrew the finding and NPRM regarding Multibanka, the bank had significantly revised its AML policies and procedures, and importantly, FinCEN found that Multibanka was working to ensure that its improved AML procedures were "translated effectively into practice."[21] In contrast, FBME has not demonstrated any AML improvements with respect to its headquarters in Tanzania. And with respect to FBME's Cyprus branch, FinCEN remains concerned that FBME would not effectively implement new AML policies and procedures given FBME's history of ignoring instructions from its AML regulator and its past willingness to actively evade AML regulations. Indeed, because of the serious concerns that FinCEN has about FBME, as described in this document, FinCEN finds that FBME continues to be a financial institution of primary money laundering concern.

As in other cases, FinCEN will continue to assess developments with respect to FBME, its regulators, and the jurisdictions in which it operates in determining whether it remains of primary money laundering concern.

[20] 71 FR 39,606.
[21] *Id.*

VII. Section-by-Section Analysis for Imposition of a Prohibition under the Fifth Special Measure

A. 1010.658(a) – Definitions

1. FBME

Section 1010.658(a)(1) of the rule defines FBME to include all branches, offices, and subsidiaries of FBME operating in any jurisdiction, including Tanzania and Cyprus. Financial institutions should take commercially reasonable measures to determine whether a customer is a branch, office, or subsidiary of FBME. Currently, FBME's bank branches are located in Tanzania and Cyprus, with a representative office in Moscow, Russian Federation.

SIFMA, TCH, and the ABA noted that it would be useful for FinCEN to provide a list of FBME's subsidiaries; however, because subsidiary relationships can change frequently, covered financial institutions should use commercially-reasonable tools to determine the current subsidiaries of FBME.

2. Correspondent Account

Section 1010.658(a)(2) of the rule defines the term "correspondent account" by reference to the definition contained in 31 CFR 1010.605(c)(1)(ii). Section 1010.605(c)(1)(ii) defines a correspondent account to mean an account established to receive deposits from, or make payments or other disbursements on behalf of, a foreign bank, or to handle other financial transactions related to the foreign bank. Under this definition, "payable through accounts" are a type of correspondent account.

In the case of a U.S. depository institution, this broad definition includes most types of banking relationships between a U.S. depository institution and a foreign bank that are established to provide regular services, dealings, and other financial transactions,

including a demand deposit, savings deposit, or other transaction or asset account, and a credit account or other extension of credit. FinCEN is using the same definition of "account" for purposes of this rule as was established for depository institutions in the final rule implementing the provisions of Section 312 of the USA PATRIOT Act requiring enhanced due diligence for correspondent accounts maintained for certain foreign banks.[22]

In the case of securities broker-dealers, futures commission merchants, introducing brokers-commodities, and investment companies that are open-end companies (mutual funds), FinCEN is also using the same definition of "account" for purposes of this rule as was established for these entities in the final rule implementing the provisions of Section 312 of the USA PATRIOT Act requiring enhanced due diligence for correspondent accounts maintained for certain foreign banks.[23]

3. Covered Financial Institution

Section 1010.658(a)(3) of the rule defines "covered financial institution" with the same definition used in the final rule implementing Section 312 of the USA PATRIOT Act,[24] which, in general, includes the following:

- An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h));
- A commercial bank;
- An agency or branch of a foreign bank in the United States;
- A Federally insured credit union;

[22] *See* 31 CFR 1010.605(c)(2)(i).
[23] *See* 31 CFR 1010.605(c)(2)(ii)-(iv).
[24] *See* 31 CFR 1010.605(e)(1).

- A savings association;
- a corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611);
- A trust bank or trust company;
- A broker or dealer in securities;
- A futures commission merchant or an introducing broker-commodities; and
- A mutual fund.

4. Subsidiary

Section 1010.658(a)(4) of the rule defines "subsidiary" as a company of which more than 50 percent of the voting stock or analogous equity interest is owned by another company.

B. 1010.658(b) – Requirements for Covered Financial Institutions with Regard to the Fifth Special Measure

For purposes of complying with the final rule's prohibition on the opening or maintaining in the United States of correspondent accounts for, or on behalf of, FBME, covered financial institutions should take such steps as a reasonable and prudent financial institution would take to protect itself from loan or other fraud or loss based on misidentification of a person's status.

C. Prohibition on Opening or Maintaining Correspondent Accounts

Section 1010.658(b)(1) of the rule imposing the fifth special measure prohibits all covered financial institutions from opening or maintaining a correspondent account in the United States for, or on behalf of, FBME.

The prohibition requires all covered financial institutions to review their account records to ensure that they maintain no accounts directly for, or on behalf of, FBME.

D. Special Due Diligence of Correspondent Accounts to Prohibit Indirect Use

As a corollary to the prohibition on opening or maintaining correspondent accounts directly for FBME, section 1010.658(b)(2) of the rule imposing a prohibition under the fifth special measure requires a covered financial institution to apply special due diligence to its correspondent accounts that is reasonably designed to guard against processing transactions involving FBME. As part of that special due diligence, covered financial institutions must notify those foreign correspondent account holders that covered financial institutions know or have reason to know provide services to FBME that such correspondents may not provide FBME with access to the correspondent account maintained at the covered financial institution. Covered financial institutions should implement appropriate risk-based procedures to identify transactions involving FBME.

A covered financial institution may satisfy the notification requirement by transmitting the following notice to its foreign correspondent account holders that it knows or has reason to know provide services to FBME:

> Notice: Pursuant to U.S. regulations issued under Section 311 of the USA PATRIOT Act, *see* 31 CFR 1010.658, we are prohibited from opening or maintaining a correspondent account for, or on behalf of, FBME Bank, Ltd., or any of its branches, offices or subsidiaries. The regulations also require us to notify you that you may not provide FBME Bank, Ltd., or any of its branches, offices or subsidiaries with access to the correspondent account you hold at our financial institution. If we become aware that the correspondent account you hold at our financial institution has processed any transactions involving FBME Bank, Ltd., or any of its branches, offices or subsidiaries, we will be required to take

> appropriate steps to prevent such access, including terminating your account.

A covered financial institution may, for example, have knowledge through transaction screening software that a correspondent account processes transactions for FBME. The purpose of the notice requirement is to aid cooperation with correspondent account holders in preventing transactions involving FBME from accessing the U.S. financial system. However, FinCEN would not require or expect a covered financial institution to obtain a certification from any of its correspondent account holders that access will not be provided to comply with this notice requirement. Instead, methods of compliance with the notice requirement could include, for example, transmitting a one-time notice by mail, fax, or e-mail to appropriate correspondent account holders of the covered financial institution, informing them that they may not provide FBME with access to the covered financial institution's correspondent account, or including such information in the next regularly occurring transmittal from the covered financial institution to those correspondent account holders.

In its comment to the NPRM, SIFMA requested reconsideration of the notice provision, specifically regarding the meaning of "one-time notice," and further objected to the requirement to send such a notice as overly burdensome and possibly duplicative. SIFMA also requested further clarification with regard to the timing of the required notice. FinCEN emphasizes that the scope of the notice requirement is targeted toward those correspondent account holders that the covered financial institution knows or has reason to know provide services to FBME, not to all correspondent account holders. The term "one-time notice" means that a financial institution should provide notice to all existing correspondent account holders who the covered financial institution knows or

has reason to know provide services to FBME, within a reasonably short time after this final rule is published, and to new correspondent account holders during the account opening process who the covered financial institution knows or has reason to know provide services to FBME. It is not necessary for the notice to be provided in any particular form. It may be provided electronically, orally (with documentation), or as part of the standard paperwork involved in opening or maintaining a correspondent account. Given the limited nature of FBME's correspondent relationships, FinCEN does not expect this requirement to be burdensome.

A covered financial institution is also required to take reasonable steps to identify any indirect use of its correspondent accounts by FBME, to the extent that such indirect use can be determined from transactional records maintained by the covered financial institution in the normal course of business. Covered financial institutions are expected to apply an appropriate screening mechanism to be able to identify a funds transfer order that on its face lists FBME as the financial institution of the originator or beneficiary, or otherwise references FBME. An appropriate screening mechanism could be the mechanism used by a covered financial institution to comply with various legal requirements, such as the commercially available software programs used to comply with the economic sanctions programs administered by the Office of Foreign Assets Control (OFAC).

Notifying certain correspondent account holders and taking reasonable steps to identify any indirect use of its correspondent accounts by FBME in the manner discussed above are the minimum due diligence requirements under the rule imposing a prohibition under the fifth special measure. Beyond these minimum steps, a covered financial

institution must adopt a risk-based approach for determining what, if any, additional due diligence measures are appropriate to guard against the risk of indirect use of its correspondent accounts by FBME, based on risk factors such as the type of services it offers and the geographic locations of its correspondent account holders.

Under this rule imposing a prohibition under the fifth special measure, a covered financial institution that obtains knowledge that a correspondent account is being used by a foreign bank to provide indirect access to FBME must take all appropriate steps to prevent such indirect access, including the notification of its correspondent account holder per section 1010.658(b)(2)(i)(A) and, where necessary, terminating the correspondent account. A covered financial institution may afford the foreign bank a reasonable opportunity to take corrective action prior to terminating the correspondent account. Should the foreign bank refuse to comply, or if the covered financial institution cannot obtain adequate assurances that the account will no longer be available to FBME, the covered financial institution must terminate the account within a commercially reasonable time. This means that the covered financial institution may not permit the foreign bank to establish any new positions or execute any transactions through the account, other than those necessary to close the account. A covered financial institution may reestablish an account closed under the rule if it determines that the account will not be used to provide banking services indirectly to FBME.

E. Reporting Not Required

Section 1010.658(b)(3) of the rule imposing a prohibition under the fifth special measure clarifies that the rule does not impose any reporting requirement upon any covered financial institution that is not otherwise required by applicable law or

regulation. A covered financial institution must, however, document its compliance with the requirement that it notify those correspondent account holders that the covered financial institution knows or has reason to know provide services to FBME, that such correspondents may not process any transaction involving FBME through the correspondent account maintained at the covered financial institution.

VIII. Regulatory Flexibility Act

When an agency issues a final rule, the Regulatory Flexibility Act (RFA) requires the agency to "prepare and make available for public comment an initial regulatory flexibility analysis" that will "describe the impact of the final rule on small entities." (5 U.S.C. 603(a)). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the final rule is not expected to have a significant economic impact on a substantial number of small entities.

A. Proposal to Prohibit Covered Financial Institutions from Opening or Maintaining Correspondent Accounts with Certain Foreign Banks under the Fifth Special Measure

1. Estimate of the Number of Small Entities to Whom the Proposed Fifth Special Measure Will Apply

For purposes of the RFA, both banks and credit unions are considered small entities if they have less than $550,000,000 in assets.[25] Of the estimated 6,192 banks, 80

[25] *Table of Small Business Size Standards Matched to North American Industry Classification System Codes*, Small Business Administration Size Standards (SBA Feb. 26, 2016) [hereinafter "*SBA Size Standards"*].

percent have less than $550,000,000 in assets and are considered small entities.[26] Of the estimated 6,021 credit unions, 92.5 percent have less than $550,000,000 in assets.[27]

Broker-dealers are defined in 31 CFR 1010.100(h) as those broker-dealers required to register with the Securities and Exchange Commission (SEC). Because FinCEN and the SEC regulate substantially the same population, for the purposes of the RFA, FinCEN relies on the SEC's definition of small business as previously submitted to the Small Business Administration (SBA). The SEC has defined the term small entity to mean a broker or dealer that: (1) had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements, were prepared pursuant to Rule 17a–5(d) or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated debt) of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business if shorter); and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in this release.[28] Based on SEC estimates, 17 percent of broker-dealers are classified as small entities for purposes of the RFA.[29]

Futures commission merchants (FCMs) are defined in 31 CFR 1010.100(x) as those FCMs that are registered or required to be registered as a FCM with the Commodity Futures Trading Commission (CFTC) under the Commodity Exchange Act

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[26] Federal Deposit Insurance Corporation, *Find an Institution*, http://www2.fdic.gov/idasp/main.asp; *select* Size or Performance: Total Assets, *type* Equal or less than $: "550000" and *select* Find.
[27] National Credit Union Administration, *Credit Union Data*, http://webapps.ncua.gov/customquery/; *select* Search Fields: Total Assets, *select* Operator: Less than or equal to, *type* Field Values: "550000000" and *select* Go.
[28] 17 CFR 240.0-10(c).
[29] 76 FR 37572, 37602 (June 27, 2011) (the SEC estimates 871 small broker-dealers of the 5,063 total registered broker-dealers).

(CEA), except persons who register pursuant to section 4f(a)(2) of the CEA, 7 U.S.C. 6f(a)(2). Because FinCEN and the CFTC regulate substantially the same population, for the purposes of the RFA, FinCEN relies on the CFTC's definition of small business as previously submitted to the SBA. In the CFTC's ''Policy Statement and Establishment of Definitions of 'Small Entities' for Purposes of the Regulatory Flexibility Act,'' the CFTC concluded that registered FCMs should not be considered to be small entities for purposes of the RFA.[30] The CFTC's determination in this regard was based, in part, upon the obligation of registered FCMs to meet the capital requirements established by the CFTC.

For purposes of the RFA, an introducing broker-commodities dealer is considered small if it has less than $35,500,000 in gross receipts annually.[31] Based on information provided by the National Futures Association (NFA), 95 percent of introducing brokers-commodities dealers have less than $35.5 million in adjusted net capital and are considered to be small entities.

Mutual funds are defined in 31 CFR 1010.100(gg) as those investment companies that are open-end investment companies that are registered or are required to register with the SEC. Because FinCEN and the SEC regulate substantially the same population, for the purposes of the RFA, FinCEN relies on the SEC's definition of small business as previously submitted to the SBA. The SEC has defined the term "small entity" under the Investment Company Act to mean "an investment company that, together with other investment companies in the same group of related investment companies, has net assets

[30] 47 FR 18618, 18619 (Apr. 30, 1982).
[31] SBA Size Standards at 28.

of $50 million or less as of the end of its most recent fiscal year."[32] Based on SEC estimates, seven percent of mutual funds are classified as ''small entities'' for purposes of the RFA under this definition.[33]

As noted above, 80 percent of banks, 92.5 percent of credit unions, 17 percent of broker-dealers, 95 percent of introducing brokers-commodities, no FCMs, and seven percent of mutual funds are small entities. The limited number of foreign banking institutions with which FBME maintains or will maintain accounts will likely limit the number of affected covered financial institutions to the largest U.S. banks, which actively engage in international transactions. Thus, the prohibition on maintaining correspondent accounts for foreign banking institutions that engage in transactions involving FBME under the fifth special measure would not impact a substantial number of small entities.

2. Description of the Projected Reporting and Recordkeeping Requirements of the Prohibition under the Fifth Special Measure

The prohibition under the fifth special measure would require covered financial institutions to provide a notification intended to aid cooperation from foreign correspondent account holders in preventing transactions involving FBME from accessing the U.S. financial system. FinCEN estimates that the time it takes institutions to provide this notice is one hour. Covered financial institutions would also be required to take reasonable measures to detect use of their correspondent accounts to process transactions involving FBME. All U.S. persons, including U.S. financial institutions, currently must exercise some degree of due diligence to comply with OFAC sanctions and suspicious activity reporting requirements. The tools used for such purposes,

[32] 17 CFR 270.0-10.
[33] 78 FR 23637, 23658 (April 19, 2013).

including commercially available software used to comply with the economic sanctions programs administered by OFAC, can easily be modified to identify correspondent accounts with foreign banks that involve FBME. Thus, the special due diligence that would be required by the imposition of the fifth special measure – *i.e.*, the one-time transmittal of notice to certain correspondent account holders, the screening of transactions to identify any use of correspondent accounts, and the implementation of risk-based measures to detect use of correspondent accounts – would not impose a significant additional economic burden upon small U.S. financial institutions.

B. Certification

For these reasons, FinCEN certifies that this final rulemaking would not have a significant impact on a substantial number of small businesses.

IX. Paperwork Reduction Act

The collection of information contained in the final rule has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and has been assigned OMB Control Number 1506–AB19. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Description of Affected Financial Institutions: Banks, broker-dealers in securities, futures commission merchants and introducing brokers-commodities, and mutual funds.

Estimated Number of Affected Financial Institutions: 5,000.

Estimated Average Annual Burden in Hours per Affected Financial Institution: The estimated average burden associated with the collection of information in this rule is one hour per affected financial institution.

Estimated Total Annual Burden: 5,000 hours.

X. Executive Order 12866

Executive Orders 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. It has been determined that the final rule is not a "significant regulatory action" for purposes of Executive Order 12866.

List of Subjects in 31 CFR Part 1010

Administrative practice and procedure, Banks and banking, Brokers, Counter-money laundering, Counter-terrorism, Foreign banking.

Authority and Issuance

For the reasons set forth in the preamble, chapter X of title 31 of the Code of Federal Regulations is amended as follows:

PART 1010—GENERAL PROVISIONS

1. The authority citation for part 1010 is revised to read as follows:

   Authority: 12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5314, 5316-5332; title III, sec. 314 Pub. L. 107-56, 115 Stat. 307.

2. Revise § 1010.658 to read as follows:

§ 1010.658 Special measures against FBME Bank, Ltd.

(a) Definitions. For purposes of this section:

(1) FBME Bank, Ltd. means all branches, offices, and subsidiaries of FBME Bank, Ltd. operating in any jurisdiction.

(2) Correspondent account has the same meaning as provided in § 1010.605(c)(1)(ii).

(3) Covered financial institution has the same meaning as provided in § 1010.605(e)(1).

(4) Subsidiary means a company of which more than 50 percent of the voting stock or analogous equity interest is owned by another company.

(b) Prohibition on accounts and due diligence requirements for covered financial institutions—(1) Prohibition on use of correspondent accounts. A covered financial institution shall not open or maintain a correspondent account in the United States for, or on behalf of, FBME Bank, Ltd.

(2) Special due diligence of correspondent accounts to prohibit use--(i) A covered financial institution shall apply special due diligence to its foreign correspondent accounts that is reasonably designed to guard against their use to process transactions involving FBME Bank, Ltd. At a minimum, that special due diligence must include:

(A) Notifying those correspondent account holders that the covered financial institution knows or has reason to know provide services to FBME Bank, Ltd., that such correspondents may not provide FBME Bank, Ltd. with access to the correspondent account maintained at the covered financial institution; and

(B) Taking reasonable steps to identify any use of its foreign correspondent accounts by FBME Bank, Ltd., to the extent that such use can be determined from transactional records maintained in the covered financial institution's normal course of business.

(ii) A covered financial institution shall take a risk-based approach when deciding what, if any, other due diligence measures it reasonably must adopt to guard against the use of its foreign correspondent accounts to process transactions involving FBME Bank, Ltd.

(iii) A covered financial institution that obtains knowledge that a foreign correspondent account may be being used to process transactions involving FBME Bank, Ltd. shall take all appropriate steps to further investigate and prevent such access, including the notification of its correspondent account holder under paragraph (b)(2)(i)(A) of this section and, where necessary, termination of the correspondent account.

(iv) A covered financial institution required to terminate a correspondent account pursuant to paragraph (b)(2)(iii) of this section:

(A) Should do so within a commercially reasonable time, and should not permit the foreign bank to establish any new positions or execute any transaction through such correspondent account, other than those necessary to close the correspondent account; and

(B) May reestablish a correspondent account closed pursuant to this paragraph if it determines that the correspondent account will not be used to provide banking services indirectly to FBME Bank Ltd.

(3) Recordkeeping and reporting. (i) A covered financial institution is required to document its compliance with the notice requirement set forth in paragraph (b)(2)(i)(A) of this section.

(ii) Nothing in this paragraph (b) shall require a covered financial institution to report any information not otherwise required to be reported by law or regulation.

Dated: March 25, 2016

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Jamal El-Hindi,
Deputy Director,
Financial Crimes Enforcement Network.

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